

**In the matter of 2229 Associates and Samaroo Management.** Case AO-298

July 15, 1992

**ORDER DENYING ADVISORY OPINION**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board Rules and Regulations, on May 21, 1992, 2229 Associates and Samaroo Management (Petitioners), filed a petition for an Advisory Opinion as to whether the Board would assert jurisdiction over their operations. In pertinent part, the petition and supporting exhibits and affidavit allege as follows:

1. On October 21, 1991, the Service Employees International Union, Local 32E, AFL-CIO (the Union) commenced a proceeding, Case No. SE-58036, before the New York State Employment Relations Board (NYSERB) in which the Union sought certification as representative of a single-employee unit at a building owned by 2229 Associates at 2229 Creston Avenue, Bronx, New York. Thereafter, following a hearing at which the Petitioners did not appear, on January 15, 1992, the NYSERB issued the requested certification of representative to the Union based on the employee's testimony that he desired the Union to represent him.

2. Samaroo Management is engaged in the business of rental building management. Samaroo Management manages the building owned by 2229 Associates at 2229 Creston Avenue, which is a rental building with 33 residential units.

3. Samaroo Management and 2229 Associates are jointly controlled and directed by Philip Samaroo, the proprietor and general partner, respectively, of both organizations.

4. During the past calendar year, Samaroo Management's gross revenue from all sales or performance of services equaled or exceeded \$1 million, and its purchases of materials or services directly from outside the State exceeded \$50,000.

5. The aforesaid commerce data has been neither admitted nor denied by the Union, and has not been considered by the NYSERB.

6. There is no representation or unfair labor practice proceeding pending before the Board.

Although all parties were served with a copy of the petition for an advisory opinion, none filed a response.

Having duly considered the matter,<sup>1</sup> we deny the petition for an advisory opinion. The Board generally accords the same effect to a state-issued certification as it does to its own certifications.<sup>2</sup> Here, as indicated above, within the past year the NYSERB issued a certification of representative to the Union based on the unit employee's testimony at the hearing that he desired the Union to represent him.<sup>3</sup> Although the Petitioners did not appear at the hearing, the certification indicates that they were duly served with a notice thereof. Further, there is no indication in the record before us that the Petitioners ever questioned the jurisdiction of the NYSERB in the state proceeding. Accordingly, as it is clear that the Board normally would not at this time entertain a representation petition in the same unit, and as the Petitioners here apparently did not raise the jurisdictional issue in the state proceeding notwithstanding that they were notified of their opportunity to appear, we decline in deference to the state certification to issue an Advisory Opinion.<sup>4</sup>

Accordingly, it is ordered that the petition for an Advisory Opinion is dismissed.

<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> See *SHA Realty*, 299 NLRB 332 (1990), and cases cited there. See also *Box Tree Restaurant*, 235 NLRB 926 (1978).

<sup>3</sup> No contention is made here that the NYSERB certification is invalid because the employee's preference was indicated in testimony rather than in an election.

<sup>4</sup> Although the Petitioners contend that the Union, by means of the state proceeding, is attempting to circumvent the well-established NLRB practice of denying certification to one-member units, the Board generally does not express any view in advisory opinion proceedings concerning the appropriateness under the NLRA of the bargaining units petitioned for in the state proceedings. See *SHA Realty*, supra at fn. 3.